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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a General meeting on July 7, 2005, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

David W. Wilson, President of the Board, called the General meeting to order at 9:35 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	Haig Papaian	Howard Weinberg
	Sushil K. Sharma	General Counsel
	Alan J. Skobin	Robin Parker
	Glenn E. Stevens	Senior Staff Counsel
	David W. Wilson	

Absent: David C. Lizárraga
Andy Robles

3. **APPROVAL OF THE MINUTES FROM THE APRIL 20, 2005, SPECIAL MEETING AND APRIL 21, 2005, GENERAL MEETING**

Ms. Parker informed the members of a spelling error to the name of Berta Phelps, a Roundtable participant, on page three of the minutes. Mr. Flesh moved to adopt the April 20, 2005, Special Board meeting minutes as corrected. Mr. Skobin seconded the motion. The motion carried unanimously.

Mr. Stevens moved to adopt the April 21, 2005, General Board meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

4. **BOARD MEMBER EDUCATION CONCERNING THE INTRODUCTION OF THE CALIFORNIA MOTOR CAR DEALERS ASSOCIATION CHAIRMAN, ED FITZPATRICK - BOARD DEVELOPMENT COMMITTEE**

Mr. Wilson informed the members and audience that due to a conflict, Mr. Fitzpatrick was unable to attend the meeting. Mr. Wilson indicated that he plans to attend a Board meeting in the near

future.

5. **PRESENTATION OF RESOLUTION TO J. KEITH MCKEAG, RETIRING BOARD ADMINISTRATIVE LAW JUDGE**

At the April 21, 2005, General meeting, the members unanimously moved to present J. Keith McKeag, retiring Board Administrative Law Judge, with a Resolution in appreciation for his dedication and service to the Board. Judge McKeag was unable to accept this resolution in person. Mr. Novi indicated that the resolution would be mailed to Judge McKeag.

6. **PRESENTATION OF RESOLUTION TO KENNETH WILSON, RETIRING BOARD ADMINISTRATIVE LAW JUDGE**

At the April 21, 2005, General meeting, the members unanimously moved to present Kenneth Wilson, retiring Board Administrative Law Judge, with a Resolution in appreciation for his dedication and service to the Board. Judge Wilson was unable to accept this resolution in person. Mr. Novi indicated that the resolution would be mailed to Judge Wilson.

7. **PRESENTATION OF RESOLUTION TO MERILYN WONG, RETIRING BOARD ADMINISTRATIVE LAW JUDGE**

At the April 21, 2005, General meeting, the members unanimously moved to present Marilyn Wong, retiring Board Administrative Law Judge, with a Resolution in appreciation for her dedication and service to the Board. Judge Wong was unable to accept this resolution in person. Mr. Novi indicated that the resolution would be mailed to Judge Wong.

8. **REPORT THAT GATEWAY CHEVROLET IS NOW IN THE MOTORS HOLDING DEALER DEVELOPMENT PROGRAM WITH A MINORITY CANDIDATE HAVING INVESTED IN THE DEALERSHIP**

At the April 21, 2005, General meeting, the members raised a number of questions concerning the ownership status of Gateway Chevrolet. The members were provided with a memorandum from Tom Novi concerning the ownership status of Gateway Chevrolet, and a letter from Joe Chrzanowski, Executive Director, Dealer Network Planning & Investments, General Motors Corporation. Mr. Novi reported that Sherwood Oklejas, CEO of Anaheim Chevrolet, also submitted a letter. This letter was provided to the members. After a lengthy discussion, it was decided that Mr. Novi would contact Mr. Chrzanowski to ascertain the extent to which the dealer candidate has invested in Gateway Chevrolet and whether the investment is at risk. A copy of the investment agreement between Motors Holding and Mr. Boulianne will also be requested. Also, the filing with the Department of Motor Vehicles concerning the Gateway dealership will be obtained from the Department. The members requested that Mr. Weinberg obtain a copy of the pending lawsuit involving Gateway Chevrolet and Anaheim Chevrolet, work with the Board's attorney, Glenn Stevens, and make a determination as to whether this matter should be agendized for the September 21, 2005, General meeting.

9. **ANNUAL UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker updating the corrective action taken for each audit finding, and a matrix providing the chronology for each. Ms. Parker provided an overview of the Board's compliance with the Audit Findings and Corrective Action Plan. She indicated that the Board was in full compliance and there were no outstanding issues.

10. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was recently renamed the Solon C. Soteris Employee Recognition Award. The staff submitted employee nominations to the Board Development Committee, Haig Papaian and Tom Flesh, who ultimately recommended Linda Lighter as the Employee Recognition Award recipient. Ms. Lighter is an Associate Governmental Program Analyst with the Board. She diligently, and in a timely manner, prepares all fiscal budget reports for the Board. She is key in preparing data summaries, invoicing, and the fee collections for the Board's Annual Fee program and Arbitration Certification Fee program. Ms. Lighter deals extensively with personnel issues to the highest satisfaction of her coworkers. She has a positive attitude, is friendly, and always seems upbeat on any given day. Ms. Lighter has contributed greatly to the Board's operations. Mr. Flesh moved to adopt the Committee's recommendation. Mr. Papaian seconded the motion. The motion carried unanimously.

11. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 3rd QUARTER OF FISCAL YEAR 2004-2005 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for the 3rd quarter of fiscal year 2004-2005. Miss Kindel reported that the Board has expended 62% of its appropriated budget for fiscal year 2004-2005.

12. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2005-2006 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the out-of-state travel for fiscal year 2005-2006. Miss Kindel reported that staff submitted out-of-state travel proposals for six trips for fiscal year 2005-06 to the Department of Motor Vehicles ("Department") for approval. The Department, Business, Transportation and Housing Agency, the Department of Finance, and the Governor's office have approved these requests. Five of the trip requests are for the Board's five public members to attend the National Automobile Dealer's Association Annual Convention and Exposition in Orlando, Florida in February 2006. Subject to the Board's approval, it is planned that the Board's Executive Director would also attend. The estimated expenses for these trips are approximately \$11,000. Mr. Flesh moved to adopt the out-

of-state travel plans for fiscal year 2005-2006. Mr. Sharma seconded the motion. The motion carried unanimously. Mr. Skobin noted that this benefit was strictly for Public members and that the Dealer members would pay their own way. Mr. Branzuela suggested that if some of the Public members are unable to attend, then perhaps other Board staff could attend in their place.

13. **REPORT ON NONSUBSTANTIVE CHANGE TO TEXT OF SECTION 551.11 (SETTLEMENT CONFERENCE: SEPARATION OF POWERS) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

Ms. Peralta reported that the nonsubstantive change to the text of Section 551.11 of Title 13 of the California Code of Regulations encompassed changing a word from “should” to “shall” for consistency from the original version that was adopted at the January 2005 meeting. The revised text reads as follows:

551.11. Settlement Conference: Separation of Powers

(a) The administrative law judge at the settlement conference shall not preside at the hearing on the merits or in any proceeding relating to motions for temporary relief or interim orders unless otherwise stipulated by the parties. Nothing in this regulation shall affect or limit the provisions of Vehicle Code § 3050.4.

(b) The parties shall file a written settlement conference statement that contains a detailed statement of facts, a statement of issues, and a good faith settlement proposal. The settlement conference statement shall be received by the Board and exchanged between the parties no later than five business days before the settlement conference.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3050.4, Vehicle Code.

This change was approved by the Executive Committee and was reported to the full Board in compliance with the Board’s policy.

14. **CONSIDERATION OF NONSUBSTANTIVE AMENDMENTS TO SECTIONS 551.2 (SUBPOENAS) AND 551.15 (REQUEST FOR DISCOVERY; INFORMAL MEDIATION) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS THAT REFLECT THE AMENDMENTS TO THE CIVIL DISCOVERY ACT THAT TAKE EFFECT JULY 1, 2005 – POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning nonsubstantive amendments to Sections 551.2 and 551.15 of the Board regulations. Mr. Weinberg reported that these regulations reflect the amendments to the Civil Discovery Act that take effect July 1, 2005. Mr. Stevens moved to adopt the proposed regulatory amendments. Mr. Papaian seconded the motion. The motion carried unanimously.

15. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
 - (1) Assembly Bill 1223 (Assembly Members Leno and Lieber)

- b. Pending Legislation of general interest.
 - (1) Assembly Bill 68 (Assembly Member Montanez)
 - (2) Senate Bill 114 (Senator Bowen)
 - (3) Senate Bill 504 (Senator Alquist)
 - (4) Senate Bill 637 (Senator Speier)

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the pending legislation that impacts the Board and pending legislation of general interest. The summary analyzes the current law, the legislation, and the impact on the Board. Ms. Parker reported that Assembly Bill 1223, and Senate Bills 504 and 637 did not pass out of the house of origin prior to the deadline, and would no longer be reported on this legislative session. According to the authors of these bills, they are two-year bills that may be pursued next year.

16. **DISCUSSION CONCERNING THE BOARD'S EFFORTS TO RECRUIT CANDIDATES FOR THE EXECUTIVE DIRECTOR VACANCY UPON TOM NOVI'S RETIREMENT IN OCTOBER 2005 - SEARCH COMMITTEE**

Messrs. Flesh and Skobin are co-chairs of the Search Committee. Mr. Skobin indicated that a flier announcing the Executive Director position was sent out and 10 applications were received. Mr. Skobin reported that the Search Committee had reviewed the applications and specific candidates would be discussed in closed Executive Session during consideration of Agenda item 18.

17. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Novi indicated that all pending projects were on schedule.

The members were also provided with a copy of the Executive Director's Report. Ms. Peralta indicated that since the Executive Director's Report was sent to the members, a number of cases had been dismissed due to settlement, were pending dismissal due to settlement, had been set for motion hearings, and were set for Mandatory Settlement Conferences. Ms. Peralta indicated that in Soutar's Nissan, Nissan had rescinded its notices and issued a new notice that in essence provided that Nissan does not plan to continue representation in the Barstow PMA. Additionally, Ms. Peralta indicated that Nissan filed a Motion to Dismiss. Mr. Stevens indicated that an Order to Show Cause should be issued to counsel to explain to the Board at the September meeting why this matter has not proceeded to a hearing on the merits. Mr. Stevens further indicated with regards to Culver City Nissan that at the July 18, 2005, Pre-Hearing Conference he wanted a schedule and hearing date set.

Mr. Weinberg reported on the status of the court cases. He indicated that a briefing schedule and hearing date had been set in *Kia v. New Motor Vehicle Board*.

Mr. Wilson acknowledged that Governor Schwarzenegger reappointed Messrs. Flesh and Skobin to the Board.

18. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), the Board shall convene in a closed Executive Session.

DISCUSSION AND CONSIDERATION OF THE EXECUTIVE DIRECTOR CANDIDATES - SEARCH COMMITTEE

The Public and Dealer members convened in closed Executive Session to discuss and consider the Executive Director candidates.

Mr. Skobin moved to appoint Bill Brennan to the position of Executive Director upon Tom Novi's retirement. Mr. Flesh seconded the motion. The motion carried unanimously.

19. **OPEN SESSION**

The members returned to open session. Mr. Wilson indicated that the members identified a candidate for the position of Executive Director and authorized his hiring. Messrs. Flesh and Skobin will meet with the candidate to discuss this.

20. **ADJOURNMENT**

Mr. Stevens moved to adjourn the meeting. Mr. Flesh seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at 11:40 a.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____
David W. Wilson
President
New Motor Vehicle Board